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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In Re: Duke Energy Corp.
4 Securities Litigation

02 Civ. 3960 (JSR)
02 Civ. 4084 (JSR)
02 Civ. 4340 (JSR)
02 Civ. 4514 (JSR)
02 Civ. 4693 (JSR)
02 Civ. 4916 (JSR)
02 Civ. 4949 (JSR)
02 Civ. 5023 (JSR)
02 Civ. 5055 (JSR)
02 Civ. 5197 (JSR)
02 Civ. 5529 (JSR)
02 Civ. 5711 (JSR)

10 August 7, 2002
11 2:00 p.m.

12 Before:

13 HON. ,

14 District Judge

15 APPEARANCES

16 LOVELL & STEWART, L.L.P.
17 Attorneys for Plaintiff
18 Albert Fadem Trust
19 VICTOR E. STEWART
20 CHRISTOPHER LOVELL
21 CHRISTOPHER J. GRAY

22 MILBERG, WEISS, BERSHAD, HYNES & LERACH, L.L.P.
23 BY: STEVEN G. SCHULMAN
24 DAVID A. ROSENFELD

25 -and-

26 ENTWISTLE & CAPPUCCI, L.L.P.
27 BY: VINCENT R. CAPPUCCI
28 STEPHEN D. OESTREICH

29 -and-

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1 LAW OFFICES OF BERNARD M. GROSS, P.C.
2 BY: DEBORAH R. GROSS
3 Attorneys for Plaintiff Wickerware, Inc.
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Attorneys for Plaintiff Finkel
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8 DICKSTEIN SHAPIRO MORIN & OSHINSKY, L.L.P.
Attorneys for Defendants
9 BY: ADAM ZIFFER

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11 Also present:

12 STULL, STULL & BRODY
Attorneys for Penn Security Bank
13 BY: HOWARD LONGMAN

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1 papers to be filed?

2 That's our position, your Honor.

3 THE COURT: All right.

4 MR. OESTREICH: Your Honor, may I just --

5 THE COURT:: Well, yes. I want to just point out one
6 thing, which I was going to get to later. There is a different
7 kind of lawyers' problem here that I think bears on the issue,
8 although I want to stress that in my view, the issue is the
9 selection of lead plaintiff and lead lawyer doesn't
10 automatically follow from that, although it usually does. But
11 I made reference in Raiser Dash to my difficulty with the fact
12 that all the complaints in that case were copied verbatim from
13 the Milberg Weiss complaint that was filed in that case raising
14 substantial questions in my mind as to compliance with Rule 11.

15 In this case, the initial complaint was filed by
16 Lovell & Stewart. Then came a different complaint filed by
17 Milberg Weiss, not a copy, a separate and independently-drafted
18 complaint. And then there followed many, many complaints from
19 still other counsel and other plaintiffs that do appear to have
20 been taken more or less verbatim. In fact, I'll stress the
21 "more" and forget the "less" from the Milberg Weiss complaint.

22 Now, I don't know why I should even consider therefore
23 the application of any other lawyer to be lead counsel. This
24 may not disqualify their clients, but just the lawyers if
25 having been on, in my view, notice of the Court's concern, they

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1 just ground out a copy of someone else's work and gave no
2 indication whatsoever that they had done the slightest work
3 that one would have expected of a firm that is bound by Rule
4 11.

5 So, it is my tentative view, and I raise this because
6 it hasn't been raised in the papers, but only in the Court's
7 prior opinion, my tentative view is that there is only two law
8 firms that can be considered here to represent a lead plaintiff
9 and that's Lovell & Stewart and Milberg Weiss, and I'll hear
10 whatever anyone else wants to say. Yes?

11 MR. OESTREICH: Again, your Honor, Steve Oestreich for
12 Andover Securities with joint application with Milberg Weiss
13 and Cappucci.

14 THE COURT: You're riding with them.

15 MR. OESTREICH: No. I'm not riding with them. We're
16 riding together. It's the same horse, two horses, my client.

17 THE COURT: It's hard for a single rider to ride two
18 horses.

19 MR. OESTREICH: Well, we have two horses, your Honor,
20 and three clients, so we have an abundance of horses.

21 The PSLRA makes it clear that you don't have to file a
22 complaint to make an application.

23 THE COURT: That's right. This goes to the adequacy
24 of counsel, not to the adequacy of the application here.

25 MR. OESTREICH: As far as experienced Courts look for

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1 efficiency. Now, to have filed 20 separate complaints could be
2 done, 10 different complaints. What we did is we read
3 Milberg's complaint. We read Lovell & Stewart's complaint. We
4 went over them with our client, whose general counsel is in the
5 courtroom today. We could have filed another complaint. We
6 have a stack of independent research. We found it was
7 necessary to file another complaint in this case, instead of
8 12, make it 14 or 16 complaints in this particular instance.

9 We were satisfied that our client lost a considerable
10 amount of money, almost a million dollars in this case, who
11 came forward and said: We want to be a lead plaintiff in this
12 case, had discussions with Milberg Weiss, the general counsel,
13 and Milberg Weiss and Entwistle and Cappucci. We reviewed the
14 case and decided that it wasn't necessary to file another
15 complaint.

16 We're not riding the same horse. We have separate
17 clients. We decided to prosecute this case together. We had a
18 similar view of the progression of the case.

19 THE COURT: That's what I say you may stand in a
20 different position than some of the other counsel, because you
21 were in --

22 MR. OESTREICH: They filed the complaint, but we had
23 substantial clients.

24 Your Honor, I don't want to let -- well, I'll address
25 this issue again, but I don't let one issue slide that

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1 Mr. Schulman pointed to and I think it's terribly
2 dealing with the certification of Pioneer. It is en-
3 difficult, if not -- withdraw that.

4 It is mandatory that the certification indicate the
5 amount of losses suffered by the client. It is virtually
6 impossible to determine whether they lost a dollar or \$100.

7 THE COURT: Frankly, I think that's a more substantive
8 point than the ones raised by Mr. Schulman, with all due
9 respect to Mr. Schulman, who's an excellent lawyer, but I'm not
10 so sure it's so hard to determine. Why do you say that?

11 MR. OESTREICH: Well, because if I look at one of the
12 papers and since they're not numbered, I only have faxes, if I
13 look at page 6, for example, of the Lovell & Stewart fax, I
14 don't know what page it is in the -- I know one thing, that
15 there's a V and A. I forget which one is the purchase and
16 which is the sale, which says "0" next to it, and then there
17 are A's and V's with "0," why would you put in transactions for
18 0? I mean --

19 THE COURT: Well, see, I note that point doesn't
20 bother me because there may have been an attempted transaction
21 that was for one reason or another the computer would still
22 record it. What is relevant, a line that says "0" does not
23 affect profit does not affect loss.

24 MR. OESTREICH: Except for one thing. Looking at it,
25 this goes -- pardon me, your Honor, being skeptical, when I was